

§ 9901.312

establish a pay system that governs the setting and adjusting of covered employees' rates of pay and the setting of covered employees' rates of premium pay. The NSPS pay system will include the following features:

(a) A structure of rate ranges linked to various pay bands for each career group, in alignment with the classification structure described in subpart B of this part;

(b) Policies regarding the setting and adjusting of band rate ranges based on mission requirements, labor market conditions, and other factors, as described in §§ 9901.321 and 9901.322;

(c) Policies regarding the setting and adjusting of local market supplements to basic pay based on local labor market conditions and other factors, as described in §§ 9901.331 through 9901.333;

(d) Policies regarding employees' eligibility for pay increases based on adjustments in rate ranges and supplements, as described in §§ 9901.323 and 9901.334;

(e) Policies regarding performance-based pay, as described in §§ 9901.341 through 9901.345;

(f) Policies on basic pay administration, including movement between career groups, positions, pay schedules, and pay bands, as described in §§ 9901.351 through 9901.356;

(g) Linkages to employees' ratings of record, as described in subpart D of this part; and

(h) Policies regarding the setting of and limitations on premium payments, as described in § 9901.361.

§ 9901.312 Maximum rates.

The Secretary will establish limitations on maximum rates of basic pay and aggregate pay for covered employees.

§ 9901.313 National security compensation comparability.

(a) To the maximum extent practicable, for fiscal years 2004 through 2008, the overall amount allocated for compensation of the DoD civilian employees who are included in the NSPS may not be less than the amount that would have been allocated for compensation of such employees for such fiscal years if they had not been con-

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verted to the NSPS, based on at a minimum—

(1) The number and mix of employees in such organizational or functional units prior to conversion of such employees to the NSPS; and

(2) Adjustments for normal step increases and rates of promotion that would have been expected, had such employees remained in their previous pay schedule.

(b) To the maximum extent practicable, implementing issuances will provide a formula for calculating the overall amount to be allocated for fiscal years beyond fiscal year 2008 for compensation of the civilian employees included in the NSPS. The formula will ensure that in the aggregate employees are not disadvantaged in terms of the overall amount of compensation available as a result of conversion to the NSPS, while providing flexibility to accommodate changes in the function of the organization and other changed circumstances that might impact compensation levels.

(c) For the purpose of this section, “compensation” for civilian employees means basic pay, taking into account any applicable locality payment under 5 U.S.C. 5304, special rate supplement under 5 U.S.C. 5305, local market supplement under § 9901.332, or similar payment under other legal authority.

SETTING AND ADJUSTING RATE RANGES

§ 9901.321 Structure.

(a) The Secretary will establish ranges of basic pay for pay bands, with minimum and maximum rates set and adjusted as provided in § 9901.322.

(b) For each pay band within a career group, the Secretary will establish a common rate range that applies in all locations.

§ 9901.322 Setting and adjusting rate ranges.

(a) Within his or her sole and exclusive discretion, the Secretary may, subject to § 9901.105(d)(2), set and adjust the rate ranges established under § 9901.321. In determining the rate ranges, the Secretary may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of

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other Federal agencies, and any other relevant factors.

(b) The Secretary may determine the effective date of newly set or adjusted band rate ranges. Established rate ranges will be reviewed for possible adjustment at least annually.

(c) The Secretary may establish different rate ranges and provide different rate range adjustments for different pay bands.

(d) The Secretary may adjust the minimum and maximum rates of a pay band by different percentages.

§ 9901.323 Eligibility for pay increase associated with a rate range adjustment.

(a) Employees with a current rating of record above “unacceptable” and employees who do not have a current rating of record for the most recently completed appraisal period will receive a percentage increase in basic pay equal to the percentage by which the minimum of their rate range is increased. This section does not apply to employees receiving a retained rate under § 9901.355.

(b) Employees with a current rating of record of “unacceptable” will not receive a pay increase under this section.

LOCAL MARKET SUPPLEMENTS

§ 9901.331 General.

The basic pay ranges established under §§ 9901.321 through 9901.323 may be supplemented in appropriate circumstances by local market supplements, as described in §§ 9901.332, 9901.333, and 9901.334. These supplements are expressed as a percentage of basic pay and are set and adjusted as described in § 9901.333.

§ 9901.332 Local market supplements.

(a) The Secretary may establish local market supplements that apply in specified local market areas whose boundaries are set at the Secretary’s sole and exclusive discretion, subject to paragraph (b) of this section and § 9901.105(d)(4). Local market supplements apply to employees whose official duty station is located in the given local market area. The Secretary may establish standard or targeted local market supplements.

(b)(1) The establishment or modification of geographic area boundaries for standard local market supplements by the Secretary will be effected by regulations which, notwithstanding 5 U.S.C. 553(a)(2), will be promulgated in accordance with the notice and comment requirements of 5 U.S.C. 553. As provided by the non-waived provisions of 5 U.S.C. 5304(f)(2) (modified here to apply to DoD regulations issued under the authority of this paragraph), judicial review of any such regulation is limited to whether or not it was promulgated in accordance with such requirements.

(2) Notwithstanding paragraph (b)(1) of this section, the Secretary’s establishment of a standard local market area boundary or boundaries identical to those used for locality pay areas established under 5 U.S.C. 5304 does not require separate DoD regulations.

(c) Local market supplements are considered basic pay for only the following purposes:

(1) Retirement deductions, contributions, and benefits under 5 U.S.C. chapter 83 or 84;

(2) Life insurance premiums and benefits under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, or similar payments under other legal authority, including this subpart;

(4) Severance pay under 5 U.S.C. 5595;

(5) Cost-of-living allowances and post differentials under 5 U.S.C. 5941;

(6) Overseas allowances and differentials under 5 U.S.C. chapter 59, subchapter III, to the extent authorized by the Department of State;

(7) Recruitment, relocation, and retention incentives, supervisory differentials, and extended assignment incentives under 5 U.S.C. chapter 57, subchapter IV, and 5 CFR part 575;

(8) Lump-sum payments for accumulated and accrued annual leave under 5 CFR 550, subpart L;

(9) Determining the rate of basic pay upon conversion to the NSPS pay system as provided in § 9901.373(b);

(10) Other payments and adjustments authorized under this subpart as specified by implementing issuances;